



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 8674-97
14 January 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by a designee of the Specialty Leader for Pulmonary Medicine dated 6 April 1999 and the Director, Naval Council of Personnel Boards (NCPB), and your response thereto. A copy of each advisory opinion is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion provided by the Director, NCPB that your pulmonary condition was ratable at 10%, and that the fibromyalgia was not unfitting or ratable. Accordingly, your request for correction of your record to show that you were retired by reason of physical disability has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board recommended that your record be corrected to show that you were discharged by reason of physical disability with entitlement to disability severance pay; however, as you did not request that action, and indicated that you did not want any monetary benefits from the Navy, the recommendation will be implemented only if you notify this office that you agree with the recommendation. Please note that you would be entitled to lump-sum disability severance payment if the Board's recommendation were to be implemented, which would be off-set against the amount of compensation you receive from the Department of Veterans

Affairs.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

**PULMONARY DIVISION
DEPARTMENT OF INTERNAL MEDICINE
NATIONAL NAVAL MEDICAL CENTER
8901 WISCONSIN AVENUE
BETHESDA MARYLAND 20889-5600**

**(301) 295-4217
Fax: (301) 295-2831**

In reply refer to:

06 APR 1999

**From: Pulmonary & Critical Care Medicine Program Director, National Naval Medical Center
To: Chairman, Board for Correction of Naval Records**

**Subj: APPLICATION FOR CORRECTION OF NAVAL RECORDS IN THE CASE OF
FORMER [REDACTED]**

**Encl: (1) BCNR File
(2) Service Record
(3) VA Records/Medical Records**

1. Per your request, Enclosures (1) - (3) were reviewed. The military medical record clearly establishes a diagnosis of Asthma prior to discharge. [REDACTED] had episodic dyspnea, abnormal pulmonary function testing and a positive methacholine challenge test, with entries documenting these facts dating back to 1994. The notes prior to discharge from the Marine Corps indicate that she was having regular exertional dyspnea and intermittent resting paroxysms of dyspnea, beginning in 1995. Several provider entries describe wheezing and she was treated on several occasions with inhaled or nebulized bronchodilator therapy. An entry from Dr. Reynolds in the Pulmonary Clinic, dated 09 APR 96 describes complaints of 2-3 attacks per day, exacerbated by exertion. [REDACTED] was being treated with daily bronchodilators and inhaled corticosteroids for at least one month prior to separation.

2. The asthma had been attributed to the traumatic pneumothorax in 1994, but this seems unlikely. [REDACTED] had also developed allergic rhinitis and typical adult onset extrinsic asthma, with an allergic trigger, would appear most consistent with the history.

3. The impact of the asthma on [REDACTED]'s ability to perform her assigned duties is not clear from the information provided. Her exercise tolerance was clearly limited, since review of her service records documents a medical profile/limitation, excusing her from physical fitness training. Whether this is due to asthma or due to her other coexisting musculoskeletal problems is not identified.

4. In my opinion, [REDACTED] should have received a medical board at the time of discharge from the Marine Corps. She clearly was not fit for enlistment in the the USMC Reserves based on both the asthma and the fibromyalgia diagnoses. The degree of impairment is not clear, because documentation of the cause of her exercise limitation is not available. Based on the daily attacks, the need for daily antiinflammatory medication and pulmonary function studies

{documenting an FEV1(with race correction) that is normal at rest and evidence for air trapping}, she would have been classified as 10% to 30% at the time of discharge (depending on the frequency and severity of attacks, which is not documented) with the old VA classification and 30% with the new system. The pulmonary function test results in the VA paperwork indicate that this has worsened significantly since discharge.

5. Please contact me at the above address or telephone number if you need additional information or input on my part.

A handwritten signature in black ink, appearing to be 'Kevin M. O'Neil', with a stylized, flowing script.

Kevin M. O'Neil
CDR, MC, USN



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420
Ser: 99-057
10 Nov 99

From: Director, Naval Council of Personnel Boards
To: Chairman, Board for Correction of Naval Records
Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER STAFF
[REDACTED]

Ref: (a) BCNR ltr JRE DN 8674-97 of 14 Oct 99
(b) SECNAVINST 1850.4D

1. Reference (a) requested comments and recommendation on Petitioner's request to correct her military record. Petitioner was apparently suffering from Asthma and was not processed through the Disability Evaluation System prior to her release from active duty. **We have determined that Petitioner's request warrants a medical separation with a 10% rating disability.**

2. The Petitioner's case history and medical records have been thoroughly reviewed in accordance with reference (b) and are returned. We have determined that Petitioner's medical condition did render her UNFIT at the time of her separation. Our review of Petitioner's medical record only supports an UNFITTING condition for her Reactive Airway Disease. At the time of her separation, there is insufficient evidence that Petitioner's Fibromyalgia was unfitting while on active duty to warrant a retrospective change.

3. The fact that a service member's medical condition was not determined to be a physical disability has nothing to do with the DVA's jurisdiction over a case. In fact it should be noted that, as long as the DVA determines a condition (for which the DVA is currently evaluating the veteran) to be service-connected, the DVA can delete, add or change diagnoses made by the Service. The DVA can also increase or decrease the disability percentage rating as the condition worsens or improves. On the other hand, the determination made by the PEB, acting under Title 10 U.S. Code chapter 61, reflects the member's condition only at the time of the member's separation.

4. In summary, the Petitioner's medical record and documentation support the conclusion that a disability rating of 10 percent for her Reactive Airway Disease with Status-Post Pneumothorax at time of discharge is warranted. There is

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER STAFF
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insufficient evidence to establish that any other condition listed by the DVA rendered Petitioner UNFIT at the time of her release from active duty in May 1996.

5. To adjudicate this matter, the following recommendation is suggested:

Provide Petitioner with a medical separation with severance pay with a disability rating of 10 percent based on the following diagnoses:

CATEGORY I

1. REACTIVE AIRWAY DISEASE, STATUS- 6699-6602 10%
POST PNEUMOTHORAX

CATEGORY III

2. FIBROMYALGIA, MULTIPLE JOINTS
3. HALLUX VALGUS, RIGHT GREAT TOE, STATUS
POST-BUNIONECTOMY


W. F. ECKERT